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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/707,207	11/26/2003	Jose Francisco Padilla Ruiz	HED-P0001	1206

36067 7590 09/29/2005

DALINA LAW GROUP, P.C.
7910 IVANHOE AVE. #325
LA JOLLA, CA 92037

EXAMINER

THAI, VANESSA K

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 09/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/707,207	Applicant(s) RUIZ, JOSE FRANCISCO PADILLA	
	Examiner Vanessa K. Thai	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

1. The following is a first Office action on the merits of 10/707,207

Priority

2. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Spain on December 9, 2002. It is noted, however, that applicant has not filed a certified copy of the U 200202952 application as required by 35 U.S.C. 119(b).

Specification

3. The disclosure is objected to because of the following informalities:
- In paragraph 8, line 5, the word "is" should be "its".
 - Paragraphs 10 – 15 are duplicates of paragraphs 20 – 25, respectively.
 - Reference numeral "1" is designated "the nasal vestibulum dilating prosthesis" in paragraphs 27, 28, and 30, but is designated "the monoblock piece" in claim 1, thus is it unclear as to what reference "1" designates.
 - Reference numeral "10" is designated "the nasal valve" in paragraph 30, but is designated "the nasal pyramid" in claim 1, thus it is unclear as to what reference numeral "10" designates.
 - Reference numeral "10" is used to designate "the nasal valve" in paragraph 30, but reference numeral "11" is used to designate "the nasal valve" in claim 1, thus it is unclear as to which reference numeral designates "the nasal valve".

Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1 and 3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitations "the external surface" in line 6, "the nasal pyramid" in line 7, and "the internal zone" in line 9. There is insufficient antecedent basis for these limitations in the claim.

Furthermore, claim 1 recites the phrases "optionally fabricated using a metallic or plastic material produced in only one tapping operation" and "wherein a support may be attached". These phrases, which contain the words "optionally" and "may", respectively, render the claims indefinite because they do not clearly set forth the metes and bounds of the present invention.

Additionally, the limitation "a support" in claim 1 is not positively recited, therefore it is not given patentable weight.

Claim 3 recites the limitation "the lateral and posterior surfaces" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 and 103(a) that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1 – 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Woodward ('581).

Woodward discloses in Figure 4, a nasal dilator comprising a monoblock piece having a central zone (1) and two curved configurations (in the vicinity below 1a) at each end, from where two protuberances (1b) project, and having concave ends (1d) and terminating in two semi annular zones (1e), which are capable of attaching to an adjustable elastic cord or a dorsal-cephalic attachment.

Conclusion


8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vanessa K. Thai whose telephone number is 571-272-5530. The examiner can normally be reached on M - F 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

vkt



KEVIN T. TRUONG
PRIMARY EXAMINER